

**NOV 16 2005**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CRISTOBAL ESCOBEDO-ACOSTA,

Defendant - Appellant.

No. 04-10452

D.C. No. CR-04-00631-FRZ

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
Frank R. Zapata, US District Judge, Presiding

Submitted November 8, 2005 <sup>\*\*</sup>

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Cristobal Escobedo-Acosta ("Acosta") appeals the sentence imposed following his conviction by guilty plea for illegal reentry after deportation in violation of 8 U.S.C. § 1326. Acosta, who was sentenced under the mandatory

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Sentencing Guidelines before the Supreme Court its issued its decision in *United States v. Booker*, 125 S. Ct. 738 (2005), asserts that the case should be remanded for resentencing under the post-*Booker* advisory Guidelines.

We dismiss the appeal because Acosta, in his plea agreement, knowingly and voluntarily waived his right to appeal. *See United States v. Cortez-Arias*, 403 F.3d 1111 (9th Cir. 2005), *as amended*, No. 04-10184, 2005 WL 2401877 (9th Cir. Sept. 30, 2005) (holding that pre-*Booker* waiver of right to appeal precludes appellate relief under *Booker*).

**DISMISSED.**